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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,512

03/10/2004

Jan Doutreloigne

938676600010

4245

41498

7590

02/14/2005

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EXAMINER

CUNNINGHAM, TERRY D

ART UNIT

PAPER NUMBER

2816

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/797,512

Applicant(s)

DOUTRELOIGNE ET AL.

Examiner

Terry D. Cunningham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/668,681.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Restart of Period***

A conversion was held with Rudolph Buschel on February 10, 2005. Mr. Buschel informed the Examiner that the Final Rejection mailed January 10, 2005, as indicated in PAIR, had not yet been received. Since Applicant's Representative has requested remailing of the Action in a timely manner, the Shortened Statutory Period is hereby reset to start at the mailing of this letter.

### ***Summary of changes in this action***

- I. The amendment filed 23 November 2004 overcomes the rejections under 35 U.S.C. § 112, second paragraph.
- II. Examiner has found Applicant's remarks concerning the outstanding Statutory Double Patenting Rejection. Therefore, the Statutory Double Patenting Rejection is hereby removed.

### ***Double Patenting***

#### ***Non-Statutory***

The following rejection is further deemed necessary due to the undetermined nature of this subject matter.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 32 of U.S. Patent No. 6,731,151. Although the conflicting claims are not identical, they are not patentably distinct from each other because such anticipates the connections for the "each of said first part and second part".

### ***Response to Arguments***

Applicant remarks as follows:

"[T]he Examiner is reminded that the parent application U.S. Patent Application No. 09/668,681 (now U.S. Patent No. 6,731,151), was subject to an election of species to the sole invention shown in FIGURE 9, under traverse, and which was maintained throughout the prosecution of that case. FIGURE 9 shows a circuit including level-shifting according to the first embodiment of the present invention of FIGURE 7, while FIGURE 8 shows a non-elected specie, or second embodiments according to the teaching of the present invention for analog switching.

[S]ince the '151 patent was the subject of a restriction requirement with traverse, and the present patent application was filed as a divisional application solely for the purpose of recapturing the subject matters that were restricted from claiming in that patent application. Therefore, the '151 patent cannot now be used as a reference against the parent application (35 U.S.C. § 121)."

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Firstly, the reference of the instant application being a "Divisional" is merely discretionary. Secondly, this statement is not consistent with the record of the parent case. Examiner initially points out that there were no claims deemed non-elected in the parent case. Further, and more importantly, the Election of Species requirement was not between the embodiments shown in Figs. 7-9. The Election of Species Requirement was made identifying the following species:

- I. Claims corresponding to Figs. 9 and 12.
- II. Claims corresponding to Figs. 17.
- III. Claims corresponding to Figs. 18.
- IV. Claims corresponding to Figs. 21.

Applicant's Election responsive to this requirement expressly disclosed that each of original claims 1-31 were of embodiments corresponding to one or more of Figs. 7-9 and 12 (each claim be expressly enumerated). Applicant then elected all of the claims. This election was accepted making it clear that species I also includes Figs. 7 and 8, although not expressly stated in the Election of Species requirement.

Claims 1 and 2 of the present Application do not recite circuitry corresponding to any of non-elected embodiments of the parent case (09/668,681), i.e., the circuitry disclosed in Figs. 17, 18 or 21 (species II - IV). As a result, since claims 1 and 2 recite circuitry clearly corresponding to the elected embodiment (species I) of the parent case, the Non-Statutory Double Patenting Rejection is proper and is hereby maintained.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terry Cunningham whose telephone number is 571-272-1742. The examiner can normally be reached on Monday-Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy P. Callahan can be reached on 571-272-1740. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC  
February 10, 2005

  
Terry D. Cunningham  
Primary Examiner  
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